

FACT SHEET

Americans with Disabilities Act - Title I

definition of individual with a disability

(Public Law 101-336)

The terms "individual with a disability" and "qualified individual with a disability" are key to the Title I (employment) provisions of the ADA.

Who is an "individual with a disability?"

Under the ADA, an individual with a disability is a person who has:

- a physical or mental impairment that substantially limits one or more major life activities;
- a record of such an impairment, or
- is regarded as having such an impairment.

What is a physical or mental impairment?

A physical impairment is defined by the ADA as "any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine."

A mental impairment is defined by the ADA as "any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities."

Who is not considered a physical or mental impairment?

Homosexuality and bisexuality are not impairments and therefore are not disabilities covered by the ADA. "Disability" does not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairment, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from current illegal use of drugs.

Simple physical characteristics, therefore, such as eye or hair color, lefthandedness, or height or weight within a normal range, are not impairments. Similarly, personality traits such as poor judgment, quick temper or irresponsible behavior, are not themselves impairments. Environmental, cultural, or economic disadvantages, such as lack of education or a prison record, also are not impairments.

A person who currently illegally uses drugs is not protected by the ADA.

What does "substantially limits a major life activity" mean?

To be a disability covered by the ADA, an impairment must substantially limit one or more major life activities. These are activities that an average person can perform with little or no difficulty, including walking, speaking, breathing, performing manual tasks, speaking, hearing, learning, caring for oneself, working, sitting, standing, lifting, and reading.

An impairment is only a "disability" under the ADA if it substantially limits one or more major life activities. An individual must be unable to perform, or be significantly limited in the ability to perform, an activity compared to an average person in the general population. The following three factors should be considered when determining whether a person's impairment substantially limits a major life activity:

- its nature and severity;
- how long it will last or is expected to last; and
- its permanent or long term impact, or expected impact.

It is not necessary to consider if a person is substantially limited in the major life activity of "working" if the person is substantially limited in any other major life activity. In general, a person will not be considered to be substantially limited in working if the person is substantially limited in performing only a particular job for one employer, or unable to perform a very specialized job in a particular field. But a person need not be totally unable to work in order to be considered substantially limited in working. The person must be significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes, compared to an average person with similar training, skills, and abilities.

Who is an individual with a "record" of an impairment?

This part of the definition protects people who have a history of a disability whether or not they currently are substantially limited in a major life activity.

This part of the definition also protects people who may have been misclassified or misdiagnosed as having a disability.

To be protected by the ADA under this part of the definition, a person must have a record of a physical or mental impairment that substantially limits one or more major life activities. A person would not be protected, for example, merely because the person has a record of being a "disabled veteran," or a record of "disability" under another Federal statute or program unless the person also met the ADA definition of an individual with a record of a disability.

Who is an individual "regarded as" having an impairment?

An individual may be protected under this part of the definition in the following three circumstances:

- 1) the individual may have an impairment which is not substantially limiting, but is treated by the employer as having such an impairment;

- 2) the individual has an impairment that is substantially limiting because of attitudes of others toward the condition; or
- 3) the individual may have no impairment at all, but is regarded by an employer as having a substantially limiting impairment.

This part of the definition protects people who are "perceived" as having disabilities from employment decisions based on stereotypes, fears, or misconceptions about disability. It applies to decisions based on unsubstantiated concerns about productivity, safety, insurance, liability, attendance, costs of accommodation, accessibility, worker's compensation costs, or acceptance by co-workers and customers.

If an employer makes an adverse employment decision based on unsubstantiated beliefs or fears that a person's perceived disability will cause problems in areas such as those listed above, and cannot show a legitimate, nondiscriminatory reason for the action, that action would be discriminatory under this part of the definition.

Who is considered a "qualified individual with a disability?"

A qualified individual with a disability is a person who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

To be protected by the ADA, a person must not only be an individual with a disability, but must be qualified.

How does an employer determine if a person is "qualified?"

There are two basic steps in determining whether an individual is "qualified" under the ADA.

- 1) Determine if the individual meets necessary prerequisites of the job.
- 2) If the individual with a disability meets the necessary job prerequisites, determine if the individual can perform the essential functions of the job, with or without reasonable accommodation.

How does an employer determine "essential functions?"

To be considered "essential," the employees in the position are actually required to perform the function.

A function could be considered "essential" if it meets one of the following:

- the position exists to perform the function;
- there are a limited number of other employees available to perform the function, or among whom the function can be distributed; or

- a function is highly specialized, and the person in the position is hired for special expertise or ability to perform it.

Evidence to be considered in determining whether a function is essential include

- the employer's judgment,
- a written job description prepared before advertising or interviewing applicants for a job,
- the amount of time spent performing the function,
- the consequences of not requiring a person in this job to perform a function,
- the terms of a collective bargaining agreement,
- work experience of people who have performed a job in the past and work experience of people who currently perform similar jobs, and
- the nature of the work operation and the employer's organizational structure.

In identifying an essential function to determine if an individual with a disability is qualified, the employer should focus on the purpose of the function and the result to be accomplished, rather than the manner in which the function presently is performed. An individual with a disability may be qualified to perform the function if an accommodation would enable this person to perform the job in a different way, and the accommodation does not impose an undue hardship. Although it may be essential that a function be performed, frequently it is not essential that it be performed in a particular way.

Is a job analysis required?

The ADA does not require that an employer conduct a job analysis or any particular form of job analysis to identify the essential functions of a job.

However, if identifying essential job functions under the ADA by doing a job analysis, the job analysis should focus on the purpose of the job and the importance of actual job functions in achieving this purpose. Evaluating "importance" may include consideration of the frequency with which a function is performed, the amount of time spent on the function, and the consequences if the function is not performed. The analysis may include information on the work environment (such as unusual heat, cold, humidity, dust, toxic substances or stress factors). The job analysis may contain information on the manner in which a job currently is performed, but should not conclude that ability to perform the job in that manner is an essential function, unless there is no other way to perform the function without causing undue hardship. A job analysis will be most helpful for purposes of the ADA if it focuses on the results or outcome of a function, not solely on the way it customarily is performed.

A job analysis that is focused on outcomes or results also will be helpful in establishing appropriate qualification standards, developing job descriptions, conducting interviews, and selecting people in accordance with ADA requirements.

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